

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division for Air Quality

4 (Amendment)

5 401 KAR 58:040. Requirements for asbestos abatement entities.

6 RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120; 29 C.F.R.
7 1910.1001; 40 C.F.R. 61.152

8 STATUTORY AUTHORITY: KRS 224.10-100(5)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5)
10 authorizes[requires] the [Environmental and Public Protection] Cabinet to promulgate[prescribe]
11 administrative regulations for the prevention, abatement, and control of air pollution. This
12 administrative regulation provides for the control of asbestos emissions from asbestos abatement
13 projects.

14 Section 1. Definitions. As used in this administrative regulation, all terms not defined
15 herein shall have the meaning given them in 401 KAR 50:010 or 401 KAR 58:025.

16 (1) "Air lock" means a system of enclosures within the containment area consisting of two

17 (2) doorways, curtained with polyethylene sheeting, at least three (3) feet apart.

18 (2) "Asbestos abatement entity" means a partnership, firm, association, corporation, sole
19 proprietorship, or other business concern, any governmental agency, or any other organization,
20 composed of one (1) or more employees or members, or an individual involved in any of the
21 asbestos-related activities specified in subsection (3) of this section.

1 (3) "Asbestos abatement project" means any renovation or demolition activity at a facility
2 which may cause a disturbance of friable asbestos material.

3 (4) "Certificate" means a permit issued by the cabinet pursuant to KRS 224.10-100(19) to
4 allow an asbestos abatement entity to engage in asbestos abatement projects, including the use of
5 equipment or practices that control the emissions of asbestos fibers into the outside air.

6 (5) "Certification fee" means a fee, established by the cabinet pursuant to KRS 224.10-
7 100(20), for the issuance of certificates to asbestos abatement entities according to this
8 administrative regulation.

9 (6) "Clean room" means an uncontaminated area or room which is part of the worker
10 decontamination enclosure system with provisions for storage of workers' street clothes and clean
11 protective equipment.

12 (7) "Clearance air monitoring" means the monitoring of air conducted inside the work area
13 after cleanup of an asbestos abatement project has been completed.

14 (8) "Containment area" means the entire area in which an asbestos abatement project is
15 conducted; including the work area, equipment room, shower room, clean room, and all associated
16 air locks.

17 (9) "Demolition" means the wrecking or taking out of any load-supporting structural
18 member of a facility together with any related handling operations.

19 (10) "Emergency operation" means a renovation operation that was not planned but results
20 from a sudden, unexpected event. This term includes operations necessitated by nonroutine failures
21 of equipment.

1 (11) "Equipment room" means a contaminated area or room which is part of the worker
2 decontamination enclosure system with provisions for storage of contaminated clothing and
3 equipment.

4 (12) "Facility" means an institutional, commercial, or industrial structure, installation, or
5 building, excluding apartment buildings having no more than four (4) dwelling units.

6 (13) "Facility component" means a pipe, duct, boiler, tank, reactor, turbine, or furnace at
7 or in a facility; or a structural member of a facility.

8 (14) "Friable asbestos material" means material containing more than one (1) percent
9 asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry.

10 (15) "Glove bag" means a manufactured device consisting of plastic with a thickness of six
11 (6) mils or more, two (2) inward-projecting long-sleeve rubber gloves, one (1) inward-projecting
12 water-wand sleeve, an internal tool pouch, and an attached, labeled receptacle for asbestos waste.
13 The glove bag is constructed and installed so that it surrounds the object or area from which the
14 asbestos containing material is to be removed, and contains all asbestos fibers released during the
15 removal process.

16 (16) "Glove bag technique" means a method of removing asbestos from pipes, ducts,
17 valves, joints, and other nonplanar surfaces, which uses one (1) or more glove bags.

18 (17) "HEPA filtration" means high efficiency particulate air filtration found in respirators
19 and vacuum systems capable of filtering particles greater than or equal to three-tenths (0.3)
20 microns in size, with 99.97 percent efficiency.

21 (18) "HVAC" means a heating, ventilation, and air conditioning system.

22 (19) "Lockdown agent" means a protective coating or sealant which is applied to a surface
23 from which asbestos-containing material has been removed.

1 (20) "OSHA" means the Occupational Safety and Health Administration.

2 (21) "Polyethylene sheeting" or "polyethylene bags" means sheeting or bags of
3 polyethylene plastic with a thickness of six (6) mils or more, except as otherwise specified.

4 (22) "Publicly owned facility" means a facility owned by the state, or any political
5 subdivision thereof, municipality, or other public entity.

6 (23) "Renovation" means altering in any way one (1) or more facility components.
7 Operations in which load-supporting structural members are wrecked or taken out are excluded.

8 (24) "Shower room" means a room between the clean room and the equipment room in the
9 worker decontamination enclosure system with hot and cold running water controllable at the tap
10 and suitably arranged for complete showering during decontamination.

11 (25) "Structure" means a whole facility, building, or a major portion thereof, such as a
12 building wing.

13 (26) "Work area" means the contaminated area within the containment area that contains
14 the friable asbestos material which is to be abated.

15 Section 2. Applicability. (1)(a) Except as provided in paragraph (b) of this subsection, the
16 provisions of this administrative regulation shall apply to each asbestos abatement entity which is
17 involved in any asbestos abatement project.

18 (b) An asbestos abatement entity shall not be required to obtain the certificate as required
19 in Section 3 of this administrative regulation or attend the training required in Section 10 of this
20 administrative regulation in order to conduct asbestos abatement projects which are not subject to
21 the provisions of 401 KAR 58:025, however, the asbestos abatement[that] entity shall comply with
22 the provisions of Sections 4(3) and 12 of this administrative regulation when performing such
23 projects.

1 (2) Any person may request that the cabinet determine whether a project is an asbestos
2 abatement project. Such a request shall include the type of disturbance involved, a description of
3 the friable asbestos materials, and laboratory data sheets with bulk sample results, methods of
4 analysis, and the signature of the analyst. The cabinet shall make its determination, in writing, not
5 later than ten (10) working days after it has received a written request with complete and accurate
6 information adequate to make a determination.

7 ~~[Section 2. Definitions. As used in this administrative regulation, all terms not defined~~
8 ~~herein shall have the meaning given them in 401 KAR 50:010 or 401 KAR 58:025.~~

9 ~~(1) "Air lock" means a system of enclosures within the containment area consisting of two~~
10 ~~(2) doorways, curtained with polyethylene sheeting, at least three (3) feet apart.~~

11 ~~(2) "Asbestos abatement project" means any renovation or demolition activity at a facility~~
12 ~~which may cause a disturbance of friable asbestos material.~~

13 ~~(3) "Asbestos abatement entity" means any partnership, firm, association, corporation, sole~~
14 ~~proprietorship, or other business concern, any governmental agency, or any other organization,~~
15 ~~composed of one (1) or more employees or members, or any individual involved in any of the~~
16 ~~asbestos related activities specified in subsection (2) of this section.~~

17 ~~(4) "Certificate" means a permit issued by the cabinet pursuant to KRS 224.10-100(19) to~~
18 ~~allow an asbestos abatement entity to engage in asbestos abatement projects, including the use of~~
19 ~~equipment or practices that control the emissions of asbestos fibers into the outside air.~~

20 ~~(5) "Certification fee" means a fee established by the cabinet pursuant to KRS 224.10-~~
21 ~~100(20) for the issuance of certificates to asbestos abatement entities according to the provisions~~
22 ~~of this administrative regulation.~~

1 ~~(6) "Clean room" means an uncontaminated area or room which is part of the worker~~
2 ~~decontamination enclosure system with provisions for storage of workers' street clothes and clean~~
3 ~~protective equipment.~~

4 ~~(7) "Clearance air monitoring" means the monitoring of air conducted inside the work area~~
5 ~~after cleanup of an asbestos abatement project has been completed.~~

6 ~~(8) "Containment area" means the entire area in which an asbestos abatement project is~~
7 ~~conducted; this includes, but is not limited to, the work area, equipment room, shower room, clean~~
8 ~~room, and all associated air locks.~~

9 ~~(9) "Demolition" means the wrecking or taking out of any load supporting structural~~
10 ~~member of a facility together with any related handling operations.~~

11 ~~(10) "Emergency operation" means a renovation operation that was not planned but results~~
12 ~~from a sudden, unexpected event. This term includes operations necessitated by nonroutine failures~~
13 ~~of equipment.~~

14 ~~(11) "Equipment room" means a contaminated area or room which is part of the worker~~
15 ~~decontamination enclosure system with provisions for storage of contaminated clothing and~~
16 ~~equipment.~~

17 ~~(12) "Facility" means any institutional, commercial, or industrial structure, installation, or~~
18 ~~building, excluding apartment buildings having no more than four (4) dwelling units.~~

19 ~~(13) "Facility component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace~~
20 ~~at or in a facility; or any structural member of a facility.~~

21 ~~(14) "Friable asbestos material" means any material containing more than one (1) percent~~
22 ~~asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry.~~

1 ~~(15) "Glove bag" means a manufactured device consisting of plastic with a thickness of six~~
2 ~~(6) mils or more, two (2) inward-projecting long-sleeve rubber gloves, one (1) inward-projecting~~
3 ~~water-wand sleeve, an internal tool pouch, and an attached, labeled receptacle for asbestos waste.~~
4 ~~The glove bag is constructed and installed in such a manner that it surrounds the object or area~~
5 ~~from which the asbestos-containing material is to be removed, and contains all asbestos fibers~~
6 ~~released during the removal process.~~

7 ~~(16) "Glove bag technique" means a method of removing asbestos from pipes, ducts,~~
8 ~~valves, joints, and other nonplanar surfaces, which uses one (1) or more glove bags.~~

9 ~~(17) "HEPA filtration" means high efficiency particulate air filtration found in respirators~~
10 ~~and vacuum systems capable of filtering particles greater than or equal to three-tenths (0.3)~~
11 ~~microns in size, with 99.97 percent efficiency.~~

12 ~~(18) "HVAC" means a heating, ventilation, and air conditioning system.~~

13 ~~(19) "Lockdown agent" means a protective coating or sealant which is applied to a surface~~
14 ~~from which asbestos-containing material has been removed.~~

15 ~~(20) "OSHA" means the Occupational Safety and Health Administration.~~

16 ~~(21) "Polyethylene sheeting" or "polyethylene bags" means sheeting or bags of~~
17 ~~polyethylene plastic with a thickness of six (6) mils or more, except as otherwise specified.~~

18 ~~(22) "Publicly owned facility" means any facility owned by the state, or any political~~
19 ~~subdivision thereof, municipality, or other public entity.~~

20 ~~(23) "Renovation" means altering in any way one (1) or more facility components.~~
21 ~~Operations in which load-supporting structural members are wrecked or taken out are excluded.~~

1 (24) "Shower room" means a room between the clean room and the equipment room in the
2 worker decontamination enclosure system with hot and cold running water controllable at the tap
3 and suitably arranged for complete showering during decontamination.

4 (25) "Structure" means a whole facility, building, or a major portion thereof, such as a
5 building wing.

6 (26) "Work area" means the contaminated area within the containment area that contains
7 the friable asbestos material which is to be abated.]

8 Section 3. Prohibition. An[~~No~~] asbestos abatement entity shall not engage in any asbestos
9 abatement project subject to[~~which is subject to the provisions of~~] 401 KAR 58:025 after April 1,
10 1988, unless:

11 (1) A certificate to [~~so~~] engage in an asbestos abatement project [~~such projects~~] has been
12 issued by the cabinet in accordance with [~~the provisions of~~] this administrative regulation, and is
13 currently in effect. [~~The provisions of~~] This subsection shall not apply during the [~~demonstration~~
14 ~~of~~] compliance demonstration required in Section 6(2) of this administrative regulation.

15 (2) At least one (1) person identified in Section 10 of this administrative regulation is in
16 attendance at the site of the containment area during the execution of the project.

17 Section 4. Work Practice Requirements. (1) [~~Except as specified,~~] The work practice
18 requirements of subsections 2 and 3 of this section shall apply to asbestos abatement entities
19 [~~which perform the indicated asbestos abatement projects~~]. [~~The provisions of~~] This section shall
20 not apply to asbestos abatement entities which perform asbestos abatement projects at the entities'
21 own manufacturing or industrial facilities if[~~when~~] the projects are performed exclusively by
22 employees of the manufacturer or industry.

1 (2) Work practice requirements for~~(1)~~ renovations addressed in 401 KAR 58:025.
2 An~~Any~~ asbestos abatement entity that engages in an an~~any~~ asbestos abatement project, including
3 emergency operations, ~~[which is determined to be]~~ subject to ~~[the provisions of]~~ 401 KAR 58:025
4 and involves renovation shall comply with the following work practice requirements:

5 (a) All objects and exposed surfaces in the work area shall be cleaned. Movable objects
6 may then be removed. Objects not removed from the work area shall be covered with polyethylene
7 sheeting secured in place. All openings within the containment area, including windows,
8 doorways, elevator openings, corridor entrances, drains, ducts, grills, grates, diffusers, skylights,
9 and openings created by the construction of any barriers, shall be sealed with polyethylene
10 sheeting. Containment areas shall be established by permanent walls extending from the floor to
11 the ceiling, or where permanent walls do not exist, by barriers. Barriers shall be constructed of
12 polyethylene sheeting attached securely in place.

13 (b) Floor sheeting shall be installed within the containment area and shall be~~consist of~~ at
14 least two (2) layers of polyethylene sheeting. Floor sheeting shall extend up side walls at least
15 twelve (12) inches and shall be sized to minimize seams. Seams~~No seams~~ shall not be located at
16 wall-to-floor joints.

17 (c) Wall sheeting shall be installed throughout the containment area ~~[according to the~~
18 ~~procedures specified in this paragraph]~~. All wall sheeting shall be~~consist of~~ polyethylene
19 sheeting, with each layer ~~[having a thickness of]~~ at least four (4) mils thick, shall be securely
20 installed to minimize seams, and shall extend beyond each wall-to-floor joint at least twelve (12)
21 inches. ~~[No]~~ Seams shall not be located at wall-to-wall joints.

22 1. Within the work area. Wall sheeting on a permanent wall shall be~~consist of~~ at least two
23 (2) layers. Wall sheeting on a barrier shall be~~consist of~~ at least one (1) layer.

1 2. Within all other areas of the containment area. Wall sheeting on a permanent wall shall
2 ~~be~~~~consist of~~ at least one (1) layer. ~~[No]~~ Wall sheeting shall not be~~is~~ required where barriers are
3 used.

4 (d) A worker decontamination enclosure system shall be provided, consisting of a clean
5 room, shower room, and equipment room, each separated from each other and from the work area
6 by air locks and accessible through doorways protected with two (2) overlapping polyethylene
7 sheets.

8 (e) All HVAC equipment in or passing through the containment area shall be shut down,
9 locked out, and tagged out to advise personnel not to activate the equipment. All intake and exhaust
10 openings and any seams in system components shall be sealed with polyethylene sheeting and
11 waterproof tape.

12 (f) Warning signs shall be displayed at all approaches to any location where airborne fiber
13 levels can be expected to exceed background levels. Warning signs shall conform with OSHA
14 1910.1001 specifications. ~~[Such signs shall be of a vertical format measuring twenty (20) inches~~
15 ~~in length and fourteen (14) inches in width, and shall contain the following information which~~
16 ~~shall be printed in letters of sufficient size and contrast as to be readily visible and legible:~~

17 ~~DANGER ASBESTOS CANCER AND LUNG DISEASE HAZARD AUTHORIZED~~
18 ~~PERSONNEL ONLY RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN~~
19 ~~THIS AREA]~~

20 (g) Negative pressure ventilation units with HEPA filtration and in sufficient number to
21 provide one (1) workplace air change every fifteen (15) minutes shall operate~~be operated~~
22 continuously for the duration of the project. The duration of the project ~~[for this requirement]~~ shall
23 ~~be~~~~considered to be~~ from the time that a containment area is established and wall and floor

1 sheeting are installed until~~[through the time that]~~ acceptable final clearance air monitoring results
2 are obtained.

3 (h) All friable asbestos material shall be thoroughly wetted through to the substrate prior
4 to removal.

5 (i) Facility components shall be removed intact or in large sections if~~[whenever]~~ possible
6 and shall be carefully lowered to the floor. Other friable asbestos material shall be removed in
7 small sections.

8 (j) Materials located at heights greater than fifteen (15) feet but less than or equal to fifty
9 (50) feet above the floor shall be dropped into inclined chutes or onto scaffolding or containerized
10 at their elevated levels for eventual disposal. For materials more than~~[located at heights greater~~
11 ~~than]~~ fifty (50) feet above the floor, a dust-tight enclosed chute shall be constructed to transport
12 removed material to containers on the floor.

13 (k) ~~[At no time shall the]~~ Friable asbestos material that has been removed shall not be
14 allowed to accumulate or become dry.

15 (l) For porous surfaces ~~[that have been]~~ stripped of friable asbestos materials, a lockdown
16 agent shall be applied to securely seal any residual fibers ~~[that may be present]~~. The lockdown
17 agent shall~~[should be chosen so as to]~~ be compatible with subsequent covering.

18 (m) Following abatement, wall sheeting and floor sheeting shall be removed and
19 containerized for disposal. A sequence of HEPA filtration vacuuming, wet wiping all exposed
20 surfaces, and surface drying shall be performed until ~~[no]~~ visible residue is not observed in the
21 work area. A minimum of twenty-four (24) hours after wet wiping shall be required to ensure that
22 sufficient drying has occurred.

1 (n) All asbestos-containing waste, except for large facility components, shall be thoroughly
2 wetted before being placed into containers for disposal. Large components shall be thoroughly
3 wetted before being wrapped in polyethylene sheeting for disposal. Disposal shall occur at
4 locations identified in paragraph (u) of this subsection.

5 (o) Wet asbestos-containing waste shall be double bagged in polyethylene bags placed in
6 sealed, rigid containers such as steel drums, fiber drums, or heavy cardboard boxes~~[(for example:
7 steel drums, fiber drums, or heavy cardboard boxes)]~~ for transport to the approved landfill
8 identified in paragraph (u) of this subsection. Large facility components may be wrapped in two
9 (2) layers of polyethylene sheeting which are secured with waterproof tape for disposal.

10 (p) All polyethylene sheeting ~~[that is]~~ used in an asbestos abatement project shall be treated
11 as asbestos-containing waste.

12 (q) All wrapping or containerizing of asbestos-containing waste shall be completed~~[done
13 in such a manner so as]~~ to prevent the outside of the wrapping or container from being
14 contaminated with asbestos fibers.

15 (r) All packaged wastes including boxes, drums, and wrapped components~~[(boxes, drums,
16 and wrapped components)]~~ shall be labeled in accordance with ~~[according to the provisions of]~~ 40
17 CFR 61.152, adopted~~[filed]~~ by reference in 401 KAR 58:025.

18 (s) Clearance air monitoring shall be performed. At least five (5) samples of air per work
19 area, or one (1) sample per room, whichever is greater, shall be obtained for the clearance air
20 monitoring. A sample volume of 3,000 liters of air shall be used. The air samples shall be obtained
21 when the air is being artificially circulated so ~~[that]~~ the fibers remain airborne during the sampling.
22 Barriers shall not be dismantled, and openings shall not be uncovered, until the final samples show
23 total fiber concentrations of less than or equal to 0.01 fibers per cubic centimeter of air. The method

1 for determining compliance with ~~[the provisions of]~~ this paragraph shall be either of the methods
2 specified in Appendix M to "Guidance for Controlling Asbestos-Containing Materials in
3 Buildings" (U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances,
4 EPA 560/5-85-024, June 1985). ~~[Appendix M, "Detailed Specifications for Sampling and
5 Analyzing Airborne Asbestos," is hereby adopted and filed herein by reference.~~

6 ~~1. Copies of Appendix M to "Guidance for Controlling Asbestos-Containing Materials in
7 Buildings" are available for sale from the Superintendent of Documents, U.S. Government Printing
8 Office, Washington, D.C. 20402.~~

9 ~~2. Copies of the material incorporated by reference in this administrative regulation shall
10 be available for public review at the offices of the Division for Air Quality as listed in 401 KAR
11 50:015.]~~

12 (t) Transport and disposal of asbestos-containing waste shall ~~[occur in a manner that will]~~
13 not ~~[permit the]~~ release ~~[of]~~ asbestos fibers into the outside air.

14 (u) Disposal shall occur at a site approved by~~[that has approval from]~~ the Division of Waste
15 Management to accept asbestos-containing waste in accordance with 401 KAR Chapter
16 47~~[according to the provisions of Title 401, Chapter 47,]~~ and shall meet all other applicable local,
17 state, and federal laws.

18 (v) The asbestos abatement entity shall submit copies of all results of sampling obtained
19 during clearance air monitoring and all disposal receipts to the building owner and the cabinet.

20 (3) Work practice requirements for~~(2)~~ demolitions addressed in 401 KAR 58:025.
21 An~~Any~~ asbestos abatement entity that engages in any asbestos abatement project ~~[which is
22 determined to be]~~ subject to 401 KAR 58:025 and involves demolition shall comply with the
23 following work practice requirements:

1 (a) Any partial or full demolition of a structure [~~or portion of a structure~~] which contains
2 facility components composed of or covered by friable asbestos material shall be removed[~~be~~
3 ~~preceded by a removal of all such materials~~] prior to demolition, according to the requirements of
4 subsection (2)[(1)] of this section.

5 (b) Instead[~~In lieu~~] of the requirements specified in subsection (2)[~~subsection(1)~~](a), (b),
6 (c), (e), and (l)] of this section, asbestos abatement entities engaging in demolition activities shall
7 comply with the following requirements:

8 1. Before beginning a demolition project, all doors, windows, floor drains, vents, and other
9 openings to the outside of the building and to areas within the building that do not contain asbestos
10 materials, shall be sealed off with polyethylene sheeting and waterproof tape; and

11 2. If a structure is to be partially demolished, all HVAC equipment in the demolition area
12 or passing through it but servicing areas of the building which will remain, shall be shut down,
13 locked out, tagged out to advise personnel not to activate the equipment, and thoroughly sealed
14 with polyethylene sheeting and waterproof tape.

15 (c) Clearance air monitoring as described in subsection (2)[~~subsection(1)~~](s) of this section
16 shall be required, following abatement activities conducted for demolition purposes, prior to
17 demolition.

18 (d) All other requirements of subsection (2)[(1)] of this section, unless specified
19 [~~specifically deleted~~] in paragraph (b) of this subsection, shall apply to demolition abatement
20 activities.

21 (4) An[~~(3)Any~~] asbestos abatement entity engaged in an asbestos abatement project,
22 including emergency operations, not subject to the requirements of subsections (2) and (3)[(1) and

1 (2)] of this section shall take reasonable precautions to prevent the release of asbestos fibers to the
2 outside air. [Such] Precautions shall include[, but not be limited to]:

3 (a) Construction of adequate barriers or use of wall and floor sheeting to contain asbestos
4 fibers released within the containment area;

5 (b) Wetting of all friable asbestos materials prior to removal and keeping them wet until
6 containerized;

7 (c) Use of HEPA filtration vacuum equipment and wet cleaning techniques to clean up the
8 work area following the project until there is no visible residue;

9 (d) Appropriately wrapping or containerizing asbestos-containing waste and labeling the
10 packaged waste including wrapped components, boxes, or fiber or metal drums~~[(wrapped~~
11 ~~components, boxes, or fiber or metal drums)]~~; and

12 (e) Transportation to and disposal at a location identified in subsection (2)~~(1)~~(u) of this
13 section in a manner that does not release fibers into the outside air.

14 (5) Instead~~(4)In lieu~~ of the work practice requirements of subsection (2)
15 ~~[subsection(1)]~~(a) to (e), (g), (i), (m), (n), (p), and (s) of this section, subsection
16 (3)~~[subsection(2)]~~(b) and (c) of this section, and subsection (4)~~[subsection(3)]~~(a) and (c) of this
17 section, the asbestos abatement entity may elect to use the glove bag technique for an asbestos
18 abatement project. The glove bag technique~~[Such technique]~~ is an acceptable alternative to those
19 requirements. The cabinet may, on a case-by-case basis, approve other alternative work practice
20 requirements for an asbestos abatement project provided that the asbestos abatement entity submits
21 the alternative to the requirements to the cabinet, in writing prior to beginning the asbestos
22 abatement project, and demonstrates to the satisfaction of the cabinet that compliance with the
23 requirements established~~[prescribed]~~ in this section is not practical or not feasible and that the

1 proposed alternative to the requirements provides an equivalent control of asbestos and is not in
2 conflict with any applicable local, state, or federal law.

3 Section 5. Applications. (1) ~~An~~[No] asbestos abatement entity shall not be considered for
4 certification unless the training requirements of Section 10 of this administrative regulation have
5 been completed prior to application.

6 (2) Applications for certification required under Section 3 of this administrative regulation
7 shall be made on form DEP 7034, Asbestos Contractor Certification Application~~[a form prepared~~
8 ~~by the cabinet for such purpose and shall contain such information as the cabinet shall deem~~
9 ~~necessary to determine whether the certificate should be issued]~~.

10 (3) Applications for certification shall be signed by an~~[a duly]~~ authorized agent of the
11 asbestos abatement entity. The~~[Such]~~ signature shall constitute personal affirmation that the
12 statements made in the application are true and complete.

13 (4) Failure to supply information required or deemed necessary by the cabinet to enable it
14 to act upon the certification application shall result in denial of the certificate.

15 (5) An~~[Any]~~ asbestos abatement entity which submits an application for certification shall
16 include with the application a filing fee, as established~~[specified]~~ in Section 8 of this administrative
17 regulation.

18 Section 6. Consideration of Applications. (1) ~~Within~~ thirty (30) days after receipt of an
19 application for certification, the cabinet shall advise the asbestos abatement entity as to whether or
20 not the application is complete, and if not complete, what additional information is necessary in
21 order to evaluate the application.

22 (2) Within fifteen (15) days after the application for certification is deemed complete, the
23 cabinet shall contact the asbestos abatement entity to establish a date when the cabinet can witness

1 an asbestos abatement project which shall be performed by the entity to demonstrate compliance
2 with ~~[the provisions of]~~ this administrative regulation.

3 (3) The cabinet shall make its application determination ~~[concerning the application]~~,
4 including its approval or denial, within thirty (30) days after attendance at the asbestos abatement
5 project demonstration, unless the cabinet determines that an additional period of time is necessary
6 to adequately review the application or its evaluation of the demonstration. The cabinet shall notify
7 the asbestos abatement entity, in writing, of the[its] determination and include any reasons for
8 denial~~[shall set forth its reasons for any denials]~~.

9 (4) If the application is approved, the asbestos abatement entity shall submit the
10 certification fee, as established~~[specified]~~ in Section 8 of this administrative regulation. Upon
11 receipt of the certification fee, the cabinet shall issue to the asbestos abatement entity the certificate
12 to engage in asbestos abatement projects, in accordance with~~[according to the provisions of]~~ this
13 administrative regulation.

14 (5) The cabinet shall deny an application for certification if the cabinet determines that the
15 requirements~~[any provision]~~ of this administrative regulation or 401 KAR 58:025 are~~[is]~~ not met,
16 if the asbestos abatement entity knowingly~~[willfully]~~ made any misstatements in the application,
17 or if the owner or operator of an asbestos abatement entity, or an entity with a different name to
18 which a certificate had previously been issued, cannot reasonably be expected to conduct himself
19 ~~[or herself]~~ in a manner that is consistent with the acceptance of responsibility for asbestos
20 abatement projects. The cabinet shall make determinations regarding issuance or denial of the
21 certification based upon the applicant's actions during any prior term of certification, the
22 information contained in the application, and any other pertinent information that is available to
23 the cabinet.

1 (6) Certificates issued in accordance with Section 5 of this administrative regulation
2 ~~[hereunder]~~ shall be subject to the[such] terms and conditions~~[as set forth and embodied]~~ in the
3 certificate~~[as the cabinet shall deem necessary]~~ to ensure compliance with the requirements of this
4 administrative regulation and of 401 KAR 58:025.

5 Section 7. Duration and Renewal of Certificates. (1) Unless the cabinet revokes a
6 certificate, that certificate, including renewal of certification, shall remain in effect for one (1) year
7 after the date of issuance.

8 (2) An[No] asbestos abatement entity shall not be considered for renewal of certification
9 unless the training requirements of Section 10 of this administrative regulation have been
10 completed prior to application.

11 (3) Applications for renewal of certification shall be made on form DEP 7034, Asbestos
12 Contractor Certification Application~~[a form prepared by the cabinet for such purpose and shall~~
13 ~~contain such information as the cabinet shall deem necessary to determine whether the certificate~~
14 ~~should be issued]~~. An application[applications] for renewal shall be submitted not earlier than
15 ninety (90) days and not later than thirty (30) days before the date of expiration.

16 (4) Applications for renewal of certification shall be signed by an[a duly] authorized agent
17 of the asbestos abatement entity. The signature[Such Signature] shall constitute personal
18 affirmation that the statements made in the application are true and complete.

19 (5) Failure to supply information required or deemed necessary by the cabinet to enable it
20 to act upon the renewal application shall result in denial of the[that] renewal application.

21 (6) An[Any] asbestos abatement entity which submits an application for renewal of
22 certification shall include with the application a filing fee, as established[specified] in Section 8 of
23 this administrative regulation.

1 (7) The cabinet shall make its renewal application determination [~~concerning the~~
2 ~~application~~], including its approval or denial, within thirty (30) days of receipt of a complete
3 renewal application. The cabinet shall notify the asbestos abatement entity, in writing, of the[its]
4 determination including~~and shall set forth~~ its reasons for any denials.

5 (8) If the renewal is approved, the asbestos abatement entity shall submit the fee for renewal
6 of certification, as established~~specified~~ in Section 8 of this administrative regulation. Upon
7 receipt of the fee, the cabinet shall issue to the asbestos abatement entity the renewed certificate to
8 engage in asbestos abatement projects, in accordance with~~according to the provisions of~~ this
9 administrative regulation.

10 (9) The cabinet shall~~may~~ deny an application for renewal of certification if the asbestos
11 abatement entity has failed to comply fully with all applicable requirements of this administrative
12 regulation or of 401 KAR 58:025 during the year preceding the renewal application.

13 Section 8. Fees. [~~The provisions of~~] This section shall not apply to any publicly owned
14 facility, as defined in Section 1[2] of this administrative regulation. All fees shall be submitted to
15 the cabinet as a certified check, cashier's check, or money order, payable to the Kentucky State
16 Treasurer; or may be submitted electronically online.

17 (1) Filing fee. Each asbestos abatement entity shall submit with the application for
18 certification or renewal of certification, a filing fee, as established~~specified~~ in paragraph (a) or
19 (b) of this subsection. The filing~~Such~~ fee is not refundable if the certification is denied or the
20 application is withdrawn. The filing fee, shall be applied toward the certification or renewal fee
21 if~~when~~ the certificate is issued, pursuant to Section 6 or 7 of this administrative regulation.

22 (a) The filing fee for certification shall be \$100.

23 (b) The filing fee for renewal of certification shall be fifty (50) dollars.

1 (2) Certification or renewal fee. A fee as established~~[specified]~~ in paragraphs (a) or (b) of
2 this subsection, shall be submitted to the cabinet prior to the issuance of the certificate or renewed
3 certificate to an~~[any]~~ asbestos abatement entity.

4 (a) The certification fee shall be \$500.

5 (b) The fee for renewal of certification shall be \$250.

6 Section 9. Certification Revocation. The cabinet may revoke any certification issued
7 pursuant to~~[under]~~ this administrative regulation if the asbestos abatement entity:

8 (1) Knowingly~~[Willfully]~~ makes any misstatements or [~~knowingly~~] omits information in
9 the certification application, renewal application, or any amendments thereto;

10 (2) Fails to comply with the terms or conditions of the certification;

11 (3) Fails to comply with the work practice requirements in Section 4 of this administrative
12 regulation; or

13 (4) Fails to properly dispose of friable asbestos materials.

14 Section 10. Training Requirements. (1) As a part of the certification as required in Section
15 3 of this administrative regulation, the asbestos abatement entity shall identify~~[provide]~~ at least
16 one (1) supervisor~~[supervisory person]~~ who shall~~[will]~~ be in attendance during the execution of
17 each asbestos abatement project, and shall be trained with an initial training course approved by
18 the cabinet, and an annual retraining course approved by the cabinet.

19 (2) Persons identified in subsection (1) of this section shall be required to successfully
20 complete a written examination, administered by the training sponsors, at the completion of the
21 training or retraining course [~~in order~~] to demonstrate familiarity with [~~those issues relevant to~~]
22 the safe performance of asbestos abatement activities. Correct responses~~[response]~~ to at least

1 seventy (70) percent of the examination questions shall be necessary to meet the requirements of
2 this subsection.

3 (3) As a part of the certification pursuant to~~[as required in]~~ Section 3 of this administrative
4 regulation, supervisors~~[persons]~~ identified in subsection (1) of this section shall attend an
5 orientation program sponsored by the cabinet, concerning the requirements, procedures, and
6 standards established by this administrative regulation.

7 (4) If at any time, the supervisor~~[supervisory person]~~ identified in subsections (1) through
8 (3) of this section is no longer employed by the certified asbestos abatement entity ~~[to which the~~
9 ~~certificate has been issued]~~, or is no longer in attendance during the execution of asbestos
10 abatement projects ~~[for such entity]~~, the entity shall immediately notify the cabinet. The cabinet
11 may continue the certificate, ~~if~~~~[based upon a showing that]~~ there is another employee who has
12 fulfilled the training requirements in this section, and who will be in attendance during the
13 execution of asbestos abatement projects for the entity.

14 Section 11. Training Course Requirements. (1) The initial training course required in
15 Section 10 of this administrative regulation shall provide ~~[,as a minimum,]~~ information on the
16 following topics:

17 (a) The physical characteristics of asbestos, including fiber size, aerodynamic
18 characteristics, and physical appearance;

19 (b) The health hazards of asbestos;

20 (c) Employee personal protective equipment;

21 (d) Recommended medical monitoring procedures, benefits of medical monitoring, and
22 employee access to records;

23 (e) Air monitoring procedures;

- 1 (f) State-of-the-art work practices for asbestos abatement activities;
- 2 (g) Personal hygiene;
- 3 (h) Additional safety hazards that may be encountered during abatement activities and how
4 to deal with them;
- 5 (i) The requirements, procedures, and standards established by federal regulations;
- 6 (j) Contract specifications and bidding procedures, liability insurance and bonding, and
7 legal consideration related to asbestos abatement; and
- 8 (k) Establishing respiratory protection programs, medical surveillance programs, and U.S.
9 EPA and OSHA recordkeeping requirements.
- 10 (2) The yearly retraining course required in Section 10(1) of this administrative regulation
11 shall ~~[, as a minimum, adequately]~~ review the topics in subsection (1) of this section, update
12 information on state-of-the-art procedures and equipment, and review regulatory changes and
13 interpretations.
- 14 (3) The course entitled "Supervision of Asbestos Abatement Projects," as approved by the
15 U.S. EPA, shall satisfy the requirements for initial training and retraining courses, as established
16 ~~[specified]~~ in subsections (1) and (2) of this section.
- 17 (4) Training courses, except~~[other than]~~ the course referenced in subsection (3) of this
18 section, may be approved by the cabinet on a case-by-case basis. The cabinet may approve ~~[such]~~
19 training courses, based on the ~~[cabinet's]~~ determination that it provides~~[the course would provide]~~
20 equivalent training as the course specified in subsection (3) of this section. A prospective course
21 sponsor shall submit ~~[, as a minimum,]~~ the following information:
- 22 (a) Information about the course sponsor;
- 23 (b) Course location and fees;

- 1 (c) Copies or description of course handouts;
- 2 (d) A detailed description of course content and the amount of time allotted to each major
3 topic;
- 4 (e) A description of teaching methods [~~to be utilized~~] and a list of all audio-visual materials;
- 5 (f) A list of all personnel to be involved in course preparation and presentation and a brief
6 description of the background, special training, and qualifications of each;
- 7 (g) A description of student evaluation methods [~~to be used~~];
- 8 (h) A description of course evaluation methods [~~to be used~~];
- 9 (i) Any restriction on attendance including language[~~(language, etc.)~~]; and
- 10 (j) A copy of the written examination to[~~which will~~] be administered at completion of the
11 course.

12 Section 12. Records. (1) Each asbestos abatement entity shall maintain records of all
13 asbestos abatement projects [~~which it performs~~] and shall make these records available to the
14 cabinet upon request. The asbestos abatement entity shall retain the records for at least six (6)
15 years.

16 (2) The asbestos abatement entity shall record the following information for each project:

17 (a) Name and address of supervisor responsible for the project;

18 (b) The location and description of the project and the estimated amount of asbestos
19 removed;

20 (c) Starting and completion date. If the completion date differs from that originally
21 scheduled, include reasons for delay;

22 (d) Summary of the procedures used to comply with all applicable requirements, including
23 copies of all notifications, if applicable;

1 (e) Name and address of the waste disposal site and disposal receipts, including the amount
2 of asbestos-containing material disposed; and

3 (f) Results of all air sampling conducted during the asbestos abatement project, if
4 applicable, including personal, area, and clearance samples.

5 Section 13. Penalties. ~~An[Any]~~ asbestos abatement entity which violates any provision of
6 this administrative regulation shall be subject to ~~[the appropriate enforcement action as established~~
7 ~~in provided under]~~ KRS 224.99-010.

8 Section 14. Incorporation by Reference (1) The following material is incorporated by
9 reference:

10 (a) Appendix M (Detailed Specifications for Sampling and Analyzing Airborne Asbestos)
11 to "Guidance for Controlling Asbestos-Containing Materials in Buildings" (U.S. Environmental
12 Protection Agency, Office of Pesticides and Toxic Substances, EPA 560/5-85-024, June 1985);
13 and

14 (b) DEP 7034, Asbestos Contractor Certification Application (March 2023).

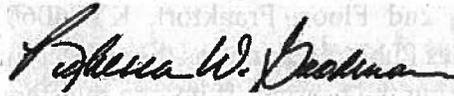
15 (2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright
16 law, at the Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday
17 through Friday, 8 a.m. to 4:30 p.m.

18 (b) Copies of Appendix M to "Guidance for Controlling Asbestos-Containing Materials in
19 Buildings" are available for sale from the Superintendent of Documents, U.S. Government Printing
20 Office, Washington, D.C. 20402.

401 KAR 58:040 approved for filing.

3/14/2023

Date



Rebecca W. Goodman, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A virtual public hearing on this administrative regulation amendment will be held on May 24, 2023, at 10:00 a.m. (Eastern Time). The public hearing can be accessed at the following website address: <https://us02web.zoom.us/j/84744885330>; meeting ID: 980 691 4504 and can be accessed by phone: +1 (309)205-3325 using access code 042759#. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Christian.Ewing@ky.gov or mail this information to Chris Ewing, Division for Air Quality, 300 Sower Building, 2nd Floor, Frankfort, KY 40601. Please put "Requirements for Asbestos Abatement Entities Public Hearing" as the subject line, and state in the body of the message if you plan to speak during the hearing. If no one registers to speak by May 16, 2023, then the hearing will be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON:

Chris Ewing, Environmental Scientist
Division for Air Quality
300 Sower Boulevard, 2nd Floor
Frankfort, KY 40601
Phone: (502) 782-6604
Fax: (502) 564-4245
Email: Christian.Ewing@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 58:040

Contact Person: Chris Ewing

Phone: 502-782-6604

Email: Christian.Ewing@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for controlling emissions from asbestos abatement projects.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control emissions from asbestos abatement projects.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation controls the emissions from asbestos abatement projects.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by controlling emissions from asbestos abatement projects.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adopts the warning signage language required by the Occupational Safety and Health Administration (OSHA) and fixes issues to conform to the requirements of KRS 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adopt the most recent federal warning signage requirements in 29 C.F.R. Subpart Z, Subsection 1910.1001 and to make the regulation consistent with the requirements of KRS 13A.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute by adopting the warning signage requirements consistent with OSHA.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by adopting the federal warning signage requirements for asbestos abatement projects.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects any owners or operators, with the exclusion of single family homes or apartments with four or fewer units, that is conducting a renovation impacting friable asbestos or conducting a friable asbestos abatement.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will comply with the most recent federal warning signage language required by the OSHA Hazard Communication Standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional costs to the regulated entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will work with the state instead of the US EPA.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this amendment initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this amendment on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this amendment to this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. This administrative regulation applies to any owners or operators, with the exclusion of single family homes or apartments with four or fewer units, that is conducting a renovation impacting friable asbestos or conducting a friable asbestos abatement.

FISCAL NOTE

401 KAR 58:040

Contact Person: Chris Ewing

Phone: 502-782-6604

Email: Christian.Ewing@ky.gov

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will affect any owners or operators, with the exclusion of single-family homes or apartments with four or fewer units that is conducting a renovation impacting friable asbestos or conducting a friable asbestos abatement.

- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.10-100(5), 224.20-110, 224.20-120, 29 CFR 1910.1001; 40 CFR 61.152

- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

The proposed administrative regulation will not generate revenue in the first year.

- (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

The proposed administrative regulation will not generate revenue in subsequent years.

- (c) How much will it cost to administer this program for the first year?

The Cabinet's current operating budget will be used to administer the program for the first year.

- (d) How much will it cost to administer this program for subsequent years?

The Cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues

Expenditures (+/-): There is no known effect on current expenditures

Other Explanation: There is no further explanation

- (4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

- (a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

The proposed administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

The proposed administrative regulation will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year?

The cost to the regulated entity for the first year will be equal to the cost of amended or additional warning signage.

(d) How much will it cost the regulated entities for subsequent years?

There will be no additional costs for subsequent years

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): There is no known effect on current cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation, of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

The proposed administrative regulation will not have a major economic impact because the proposed amendments comply with OSHA asbestos warning signage requirements as established in 2012.

FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 58:040

Contact Person: Chris Ewing

Phone: 502-782-6604

Email: Christian.Ewing@ky.gov

(1) Federal statute or regulation constituting the federal mandate.

The federal mandate for this administrative regulation amendment is in 29 C.F.R. 1910.1001 pursuant to the Occupational Safety and Health Act and 40 C.F.R. 61.152.

(2) State compliance standards.

This administrative regulation amendment adopts the federal standards for warning signage required by the Occupational Health and Safety Administration and the asbestos requirements in 40 C.F.R. 61.152.

(3) Minimum or uniform standards contained in the federal mandate.

The federal mandate requires states to revise warning signage to be consistent with the federal language and to control emissions from asbestos abatement projects.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No. This administrative regulation establishes the same requirements as the federal requirements for OSHA and US EPA.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Stricter standards or additional or different responsibilities or requirements are not imposed.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

401 KAR 58:040

(1) The "Asbestos Contractor Certification Application" DEP 7034 (March 2023) is the application form required for entity certification. DEP 7034 is a new form as part of this regulatory amendment. The application requires entities to choose certification type, and submit requirements consistent with the regulation.

This document consists of 1 page.